

# Plight of under trials in India: A Critical Analysis

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**Abstract**— Prison administration in India is coping up with number of problems since many years i.e., the problems of overcrowding, congestion, increasing proportion of undertrial prisoners, inadequacy of prison staff, lack of proper care and treatment of prisoners, lack of health and hygienic facilities, insufficient food and clothing, lack of classification and indifference attitude of jail staff, torture and ill-treatment, insufficient communication so on and so forth.

The consequences of pre-trial detention are grave. Hence, the state of prisons and lockups is a known cause for grave concern. An undertrial is one of the categories of jail inmates that have been found responsible as one of the important factors behind overcrowding in the jails. They form a major portion of prison inmates among various types of prisoners. These voiceless people remain in prison pending trial which may or may not lead to conviction. Delay in trial of cases is the vital human rights issue of undertrials. The purpose of keeping undertrials in the custody is to ensure fair trial so that they cannot be in a position to influence or induce the witnesses. Long detention of the undertrials amounts to violation of human rights. Further this unnecessary detention of undertrials causes a number of problems to the other prisoners and to the prison organization as well. The core problem which is being taken in the present study is concerning plight of undertrials and delay in trial of prison society.

**Index Terms:** undertrials, Delay in trials, Human rights, Plights of undertrials.

## I. INTRODUCTION

*“I know not whether laws be right,  
Or whether laws be wrong;  
All that we know who lie in gaol.  
Is that the wall is strong;  
And that each day is like a year,  
A year whose days are long”.*

Under-trial prisoners are the prisoners, who are in custody of the state, awaiting their trial. Their charge-sheet may or may not have been prepared by the

police authority or judiciary. In other words, under-trial prisoner is a prisoner, who is in judicial custody (Jail), awaiting the trial, in their case. Police investigation might have been completed or charge sheeted or it may be pending. Our Criminal Justice System keeping centralizing on the present topic consists of three main parts: (1) Police- whose task is to enforce the laws correctly; (2) Courts- to hold a fair criminal trial where the question of guilt is decided with the help of lawyers and witnesses and finally; (3) The Prisons - consisting jails or prisons. In other words, Police department, Courts and Prison administration are the three main pillars on which the Criminal justice system is based upon. The most neglected aspect of this justice system is the delay caused in the disposal of cases and detention of the undertrial pending trial.

To understand the situation of the ones being discussed it is important to understand who they are; thus, the question lies who are the Under-trials? Under trials are the ones alleged with the crime committed but are yet to be delivered their sentence, say a person who has committed theft or is alleged to have committed theft will not be a thief until and unless court declares him so under the prescribed law of the land. In the country where 3.3 crore cases are totally pending in which 2.84 are pending on the trial stage and a confirmed figure of 43 lakh and 57,987 cases, is pending in the High Courts and Supreme Court respectively .

## II. HISTORICAL INTRODUCTION

Pre- Independence time:

Struggle of Under-trials have a long history. The jail time as the present system was invented under the reign of Macaulay in the year 1835 and was reviewed by a committee named prison discipline committee in 1838. The committee viewed that the prisoners in particular should be rejected of all humanitarian

needs and should be treated rigorously in the prisons. This war continued between the system and the prisoners for long and a prolonged era of brutality continued.

Then in India the problem of under trials was reported and was studied in the year of 1919-1920 by Indian Jails Committee and this committee made several recommendations like separate jails should be setup for various categories of prisoners and minimum area of 75 yards should be provided etc. It also suggested that short-term imprisonment should be replaced by fine, probation or warning or other substitutes. With the efforts of this committee a change was brought in Cr. P. C. was brought which brought suspension of sentences in several cases, further in 1935 with the promulgation of Government of India Act, 1935 prison became a transferred subject under the autonomous provinces and various reform committees were made in Mysore, Uttar Pradesh etc. to improve the prison administration for both under trials and normal prisoners.

Post –Independence developments:

After independence, the constitution of India included “Prisons, reformatories, Borstal Institutions and other institutions like of a like nature and persons detained there in, etc. into State list in the seventh schedule. More Jail Reforms were brought during the years of 1950 to 1975 like East Punjab Jail Reforms Committee, 1948-1949, the Madras Jail Reforms Committee, 1950-1951, Orissa 1952-1955 etc. In the fifties, Government of India, invited technical assistance from the United Nations, and Dr. W.G. Reckless spent some time in India, in 1951-1952 and has suggested some ways to reduce the number of under trial prisoners, the periods of remand in the jails, establishment of Correctional Administration in center etc.

Prisoners in particular can be classified into three broad categories:

- a. Convicts
- b. Under trials
- c. Detenues

Here our concern is with the *undertrials*. An under-trial is “*a person who has been committed to judicial custody pending investigation or trial by a competent authority*”. According to a survey conducted by National Crime Records Bureau (NCRB), in its report of Prison Statistics 2015, the bureau concluded

that more than seventy-seven (77%) percent at a given time are under-trials in the Indian jails which amounted to 200,000 in the October 2016 when the report was published. It mentioned that thousands of under-trials had been incarcerated for a period of five years or more and many of them have exceeded the amount of punishment the law had prescribed for them to serve. The law under the section 57 and 71 of Indian Penal Code , 1860 lays down that no person shall serve the maximum punishment than is prescribed in the law and which shall not be more than twenty years until it is a punishment of life imprisonment or death punishment.

### III. REASONS FOR THE HIGH POPULATION OF UNDER TRIALS

The system has been devolving the reasons for the increase in the population of under-trials in the jail system. The under-trials have been registered to be two third of the total population of people convicted, certain reasons are as follows:

a) Indiscriminate and unexplainable arrests: Police have been given very wide power of arrests and such power is generally exercised against the downtrodden or the weak portions of the society. Law was though meant to be equal but as Article 14 is interpreted the equality is seemed amongst equals and is thus maintained. The Law Commission in its 268th report remarked that over 60 per cent of arrests are unnecessary. Criminal Procedure Code (later read as CrPC) mentions that before arrest the police shall ask for surrender and only in case of noncooperation the necessary force shall be used.

b) Failure to pay the bail bond: the CrPC provides for the grounds of bail to be granted both by the magistrate and the police officer individually under section 436, 437 and section 169 and 167(2) which provides for the default bail. Under-trials have been specifically given the right to be granted bail under section 436 -A by the Amendment act of 2006, with or without sureties. But most of them fail to furnish the bail amount due to their low financial capacity and thus remain detained in the custody of the state, even though they would have served the half of the maximum punishment as per the law.

c) Lack in the System: The system has various flaws which comprises of the following:

- 1 The investigation conducted by the police is generally slow due to shortage of police personnel and no separation between investigative and law and order prevailing in the country.
- 2 Justice Bhagwati highlighted in *Hussainara vs. Home Secretary* 1980 “that one of the reasons why our legal and judicial system continuously denies justice to the -poor by keeping them for long years in pre-trial detention in our highly unsatisfactory bail system. It suffers from property-oriented approach which proceeds on the erroneous assumption that rise of monetary loss is only deterred against the feeling from justice”
- 3 As provided in the constitution under Article 39A, free legal aid should be prevailed to all, this practice has been propagated and promoted by various institutions but still it has a much longer road to walk on.
- 4 Various provisions for not detaining the prisoners have been enacted but are still not been questioned due to their unawareness and lack of sympathy on the part of administration.
- 5 There has been a gross negligence on the part of the three organs of the government to collectively work together and to make the ideal of welfare state sworn by our forefathers come true.

#### IV.PROBLEMS FACED BY THE UNDER-TRIALS

At any given time, criminal justice system has 0.2 million under-trial prisoners who are being neglected while they are facing the brutal criminal system without their allegations being proved against them. The people who have gross criminal offences alleged against them and are unable to furnish their bail amount comprise the major part of the prisoners.

The Universal Declaration of Human Rights and the Standard Minimum rules of treating the prisoners have laid down the rules of treating the prisoners and specially the under-trials in spite of which the under-trials face a plight of harshness and bad faith. The problems in spite of which came forward were:

a) Prison Violence: Indian Jails have always faced a problem of overcrowding which is evident by the statistical data from time to time. NCRB on its site has published that in the year 2016 there were 1469

and 115 natural and unnatural deaths caused under judicial custody. It also carved out the reasons for the same which included suicide, murder by inmates, death caused by fellow inmates, assault by other elements, negligence of jail staff and other reasons. Thus, Supreme Court has duly raised its concern for the same. After the brutal incident by police officials in the case of *Khatri V. State of Bihar* where 80 people were blinded by puncturing and pouring acid in their eyes *The Sunil Batra V. Delhi Administration* came forward where clear guidelines for non-tackling of inmates by jail officials and providing physical amenities were stated.

b) Effect of other criminals: Though clear guidelines have been mentioned that under trials will not interact with the convicts but due to the issue of overcrowding, various under-trials are kept and engaged together. The guidelines also lay down that bifurcation shall be made even in between the alleged heinous or non-heinous and less heinous crimes. But such is not possible due to the lack in the system and non-availability of police officials to manage the same. Thus, a person who shares the chamber with other hard-core criminals is sure to learn certain criminal activities. This might not be true but the delayed justice often makes this tenure prolonged and thus the impact is stoned in the individual.

c) The diminishing health of the inmates: The problem of overcrowding and exhaustion of prison facilities, prison environment is unhealthy and is a hot spot for transmitting the infectious diseases.

d) Family Negligence: Due to the conviction and non-furnishing of bail, the under-trials tend to attend the complete period in the prisons. This period is generally served more than is prescribed by law and hence the inmates are shattered and so are the family. Once the family is convinced that the inmate might not be able to make it, they withdraw their love and support.

#### V.JUDICIAL CONCERN FOR UNDER TRIALS

Under trials are most deprived of their rights given by law. Article 21 the harbinger of under trial prisoners lays down that no one would be deprived of his personal life and liberty except according to the procedure established by law. Thus, any individual who is deprived of his liberty which is not in accordance of law can enforce his fundamental right

but generally the problem which lies is the procedure which mentions that the under trial or the alleged person will be left only if his bail has been furnished which may or may not be with sureties. In our country most of the under-trials are the ones which cannot furnish their bail and are hence serving the punishment. Article 39A even enables the free legal aid provision which was given in the case of *Madhav Hatawaimaraov. state of Maharashtra* in the year 1978.

Justice delayed is justice denied and thus speedy trial though not a fundamental right but was brought into the ambit by the *Maneka Gandhi v. Union of India* judgment. J. Bhagwati laid down the following observations in the case of *HussainarKhatoon v. Home Secretary* (In this case a large number of under trials were set free who had been imprisoned for long periods of time without a trial):

a) It was disclosed that administration of justice inside the prison in the State of Bihar had a shocking state of affairs. It was seen that a large number of people including women and children were put behind bars for years for trivial offences. They were convicted ranging from three to ten years.

b) There were some women prisoners in Bihar jail without even being accused of any offence. They were put in jail under protective custody. Some of them were victims of an offence: and others were required for the purpose of giving evidence in certain other cases.

c) A large number of undertrials were kept imprisoned for periods longer than the maximum sentence that can be imposed on them if they were convicted for the charge for which they are being held.

d) The State cannot avoid its constitutional obligation to provide speedy trial to the accused by pleading financial. or' administrative inability; The State is under a constitutional mandate to make sure speedy trial and whatever is important for this purpose has got to be done by the State.

## VI.CONCLUSION

Thus, it can be concluded that all though the under trials plight is visible to the system and they are able to understand the problems but nothing effective is being done. The problem can be sorted out with following measures:

- Scientific Methods of Investigation should be adopted
- Appearance of Undertrials in Courts should be Regularized
- Recruitment of Judges is the Need of the Hour
- More Fast Track Courts and Special Courts should be increased
- To check hygiene and Control the Health Problems in Prisons

Indian Prison system is at the brink of collapse due to colossal problem of overcrowding and archaic design of Indian Prisons. In addition to this, slow redressal of justice also leads to the overcrowding of prisons with the ever-increasing population of undertrials. Thus, it becomes pertinent to minimize the prison population, especially undertrials. Thus in nut shell, There is need of coordination between the Centre, Judiciary and State Governments because the undertrials do not have anyone to stand as guarantors, nor assets to furnish bail bonds; Alas! The poor continued to suffer in prisons.

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